

Service Date: August 7, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of)	UTILITY DIVISION
WorldCom, Inc. and MCI Communications)	
Corporation for Approval to Transfer Control of)	DOCKET NO. D97.10.191
MCI Communications Corporation)	
to WorldCom, Inc.)	ORDER NO. 6043b

FINAL ORDER

APPEARANCES

FOR THE APPLICANTS:

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Washington, DC 20007.

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FOR THE INTERVENORS:

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Montana 59601.

BEFORE:

DAVE FISHER, Chairman
NANCY McCAFFREE, Vice Chair
BOB ANDERSON, Commissioner
DANNY OBERG, Commissioner
BOB ROWE, Commissioner

COMMISSION STAFF:

Robin McHugh, Chief Counsel; Eric Eck, Chief, Revenue Requirements Bureau;
1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601.

Background

1. On October 15, 1997, WorldCom filed an application for approval to acquire control of MCI through an Exchange Offer transaction. In its Application, WorldCom advised the Commission that it intended to make an Exchange Offer to the shareholders of MCI to acquire all of the issued and outstanding shares of MCI, as a result of which MCI would become a wholly-owned subsidiary of WorldCom. On November 9, 1997, WorldCom and MCI entered into an Agreement and Plan of Merger (the "Merger Agreement") to combine the two companies, which was unanimously approved by the Boards of Directors of both companies. In a November 24, 1997 Supplemental Letter to the Application (filed November 25, 1997), WorldCom and MCI advised the Commission that because WorldCom and MCI would now consummate the transaction pursuant to the Merger Agreement, WorldCom would not pursue its Exchange Offer for MCI.

2. On December 22, 1997, GTE Corporation and GTE Communications Corporation (collectively, "GTE") filed a Petition to Intervene in this proceeding. On January 13, 1998, the Commission granted GTE leave to intervene, "provided its intervention does not unduly broaden the issues and unduly delay or prejudice the adjudication of the rights of the parties in this Docket." *See* Notice of Commission Action (NCA), January 27, 1998. The International Brotherhood of Electrical Workers and the Communications Workers of America were also granted intervention in this proceeding. NCA, March 9, 1998. Neither did discovery, filed testimony, nor otherwise participated actively in the Docket. On January 27, 1998, the Commission issued Procedural Order No. 6043 in this Docket.

3. On March 9, 1998, the Commission clarified that its “review in the proceeding is limited to the effects of the proposed merger on Montana intrastate regulated telecommunication products.” NCA, March 13, 1998

4. Discovery was conducted by the Commission Staff, GTE and the Applicants, pursuant to the Procedural Order.

5. Pursuant to the Procedural Order GTE submitted pre-filed Direct Testimony by Debra R. Covey (GTE Exhibit 2) and Robert G. Harris (GTE Exhibit 1) in opposition to the Application. In addition to the original Application (WorldCom Exhibit 1) and Supplemental Letter (WorldCom Exhibit 2), WorldCom submitted Rebuttal Testimony by David N. Porter (WorldCom Exhibit 8) and Hal S. Sider (WorldCom Exhibit 7), and MCI submitted Rebuttal Testimony by Timothy J Gates (MCI Exhibit 1), in response to the Direct Testimony filed by GTE.

6. An evidentiary hearing was held before the Commission on June 2, 3 and 4, 1998. At the hearing witnesses Porter, Gates, Harris and Covey appeared to sponsor their testimony and submit to cross-examination. Dr. Sider was unable to appear, but sponsored his testimony by affidavit. GTE agreed to waive cross-examination of Dr. Sider. Hearing Transcript (H. Tr.) at 252.

Findings and Discussion

Overview of the Proposed Transaction

7. As set forth in the Application, WorldCom is a Georgia corporation publicly traded on the Nasdaq Stock Market under the stock symbol WCOM. Its principal offices are located at 515 East Amite St., Jackson, Mississippi 39201-2702. WorldCom’s operating

subsidiaries offer service throughout the United States and in more than 50 countries worldwide, providing a wide variety of facilities-based and resold local, long distance, and international voice and data communications services. Through its operating subsidiaries, WorldCom is authorized to offer intrastate telecommunications services nationwide, including in the State of Montana, and is also authorized by the FCC to offer domestic interstate and international services as a non-dominant carrier nationwide. WC Exh. 1 at 2.

8. MCI is a Delaware corporation publicly traded on the Nasdaq Stock Market under the stock symbol MCIC. Its principal offices are located at 1801 Pennsylvania Avenue, N.W., Washington, D.C. 20006-3606. MCI's operating subsidiaries offer a variety of local, long distance, and international voice and data communications services. Through its operating subsidiaries, MCI is authorized to provide intrastate interexchange services throughout the United States, including the State of Montana. MCI also is authorized to provide local telephone and competitive access services primarily through its operating subsidiary MCImetro Access Transmission Services, Inc., in over 30 states. MCI's non-dominant operating subsidiaries are also authorized by the FCC to offer domestic interstate and international services nationwide. WC Exh. 1 at 2-3.

9. On November 9, 1997, WorldCom and MCI entered into an Agreement and Plan of Merger (the "Merger Agreement") to combine the two companies, which was unanimously approved by the Boards of Directors of both companies. The transaction is structured such that, upon consummation of the transaction, MCI will merge with and into TC Investments Corp., a wholly-owned subsidiary of WorldCom. TC Investments Corp. will be renamed MCI Communications Corporation. That surviving company will be a wholly-owned subsidiary of

WorldCom. The Application, as supplemented, seeks approval from this Commission for the transfer of control of MCI's Montana operating subsidiaries to WorldCom. WC Exh. 2 at 1.

Standard of Review

10. Before the Commission can approve an application for transfer of control it must conclude that the new public utility will furnish reasonably adequate service and facilities at just and reasonable rates. Section 69-3-201, MCA. The Commission has ruled that in assessing whether a proposed transfer of control is in the public interest, its focus is on whether the transfer will "affect [the combined] utility's duty to render reasonably adequate services and facilities at reasonable and just rates." *Joint Application of MCI Telecommunications Corporation and British Telecommunications plc for Approval of Merger*, Docket No. D96.11.184, Order No. 6004 at 4 (Sept. 2, 1997) (*MCI/BT Order* . .

11. GTE argued that the Commission should conduct an antitrust analysis of the proposed transaction pursuant to Montana's antitrust laws. However, as GTE points out, this Commission should give due consideration to the interpretations of federal antitrust laws. GTE Brief at 6-7. On this matter, the Commission defers to the federal agencies that are conducting antitrust reviews of the proposed transaction. The Commission notes that on July 15, 1998, after conducting an antitrust review of the transaction, the United States Department of Justice approved the transfer of control with conditions involving the transfer of MCI's Internet business.

Qualifications of the Applicants

12. Before it can approve this merger the Commission must find that the combined entity following the merger will possess the requisite financial, technical, and managerial

qualifications. In 1996, both companies had revenues of several billion dollars. WC Exh.1 at 5. Each company is operated by a highly-qualified management team, all of whom have extensive backgrounds in telecommunications. *Id.* This Commission also has previously found both WorldCom and MCI separately qualified to provide telecommunications services within Montana. WC Exh. 1 at 4-5. The record in this proceeding demonstrates that upon consummation of the transaction, the combined company will have access to adequate managerial, financial, and technical resources of both companies, which should enable the combined company to provide adequate utility service in Montana.

Evidence Presented on Cost Savings and Efficiencies

13. GTE asserted that the Applicants failed to provide any Montana-specific analysis or other factually specific studies reflecting the impact of the proposed transaction on the Montana telecommunications market. Although the Applicants did not submit a detailed quantification, they did provide concrete and specific evidence demonstrating that the proposed transfer of control is likely to create efficiencies for the combined company that would allow it to continue to render reasonably adequate services at reasonable and just rates. In particular, the Applicants provided examples of how the proposed transaction will permit WorldCom access to MCI's Montana facilities resulting in savings in transport costs, efficiencies in the use of MCI's facilities, reductions in lease and access charges, and savings in construction costs. MCI Exh.1 at 10; WC Exh. 8 at 9; MCI Exh. 1 at 8; H.Tr. at 106-07; MCI Exh. 1 at 9-10; H.Tr. At 99-102. GTE's witness agreed that these types of efficiencies can be expected, though questioned whether these efficiencies would be passed through to customers. H.Tr. at 132, 232. It appears likely that increased efficiencies will over time result in lower prices. The Applicants also

provided evidence that, combined, the companies could achieve savings and efficiencies in administrative duties and costs. WC Exh. 8 at 6; MCI Exh. 1 at 6; H.Tr. At 105-06. MCI's witness Gates estimated that WorldCom's use of MCI's facilities in lieu of constructing its own could provide cost savings as high as \$300 million. H.Tr. at 99. The evidence presented in this proceeding is sufficient to support the conclusion that the proposed transaction is in the public interest of Montana consumers.

Impact of Transaction on the Intrastate Long Distance Market

14. GTE asserts that the proposed transaction is not in the public interest because, GTE contends, it will reduce competition in the Montana telecommunications market. GTE Brief at 8-21. GTE's argument focuses primarily on the interexchange market. The crux of GTE's position is that the merger will eliminate a direct competitor in the retail interexchange market and thereby will "eliminate choice in Montana as the consumers in Montana will have one less option for their long distance carrier." GTE Brief at 20.

15. As GTE itself notes, however, WorldCom does not have any facilities in Montana, but resells service here. WC Exh. 8 at 5. After the transaction is consummated, there will be no reduction in the number of facilities-based carriers in Montana and a combined WorldCom and MCI still will be one of over 300 carriers registered to provide intrastate long distance services in Montana. Accordingly, there is no indication that the proposed transfer will in fact reduce competition in the Montana interexchange market or to any material extent diminish consumer choices. Nor, given the number of competitors remaining in this market, is there any indication that the combined company will not continue to offer its services at reasonable rates. As stated by the Applicants, upon completion of the transaction, the services

provided by WorldCom's and MCI's Montana operating subsidiaries will continue to be provided under the same terms and conditions. WC Exh.2 at 1.

16. GTE's witness Harris endeavored to show that the interexchange marketplace in the state would become unacceptably concentrated if the merger were consummated, but the Commission is not persuaded by this argument. GTE Exh. 1 at 30-31. For example, he stated that the best way to measure market shares is to use the number of points of presence various carriers have in Montana. *Id.* Yet, as Applicants pointed out (Joint Brief at 15), concentration measured in this fashion will not increase as a result of the transaction.

17. GTE also asserts that the merger will reduce WorldCom's incentive to "aggressively supply wholesale service" in the long distance market. GTE Brief at 21-22. GTE's witness Covey submitted pre-filed testimony focused on GTE's existing contractual relationship with WorldCom, pursuant to which GTE purchases interexchange services from WorldCom for resale to end users. *See generally* GTE Exh. 2. Witness Covey explained that WorldCom is uniquely suited to GTE's needs as a wholesale supplier, and voiced her concern that WorldCom may have a reduced incentive to compete in the wholesale marketplace, resulting in potential harm to GTE in the long run. *Id.* The Commission finds that GTE's concerns are speculative, and not sufficient to support a denial of the application.

18. WorldCom has firmly stated in this proceeding that it does not intend to reduce its commitment to the wholesale market following the transaction. WC Exh. 8 at 15. Given WorldCom's substantial investment in the wholesale business, (WC Exh. 9 at 11) the Commission believes it is unlikely that after the transaction it would abandon this significant source of income.

19. In addition, there is substantial evidence to indicate that there are viable alternatives to GTE for obtaining wholesale services. As GTE notes, WorldCom itself is not a facilities-based wholesale provider in Montana, GTE Brief at 13, and must utilize the networks of other carriers in order to provide its services to GTE. H.Tr. at 170-172. The evidence demonstrates that in addition to the networks of AT&T, Sprint, WTCI, and Touch America in Montana, several other networks are emerging with the express intent of serving resellers, from which GTE can obtain the services that it needs to serve Montana consumers much in the same way it currently utilizes WorldCom's services. WC Exh. 8 at 7-8; MCI Exh. 1 at 11-12.

20. GTE also has a long-term contract with WorldCom that protects GTE from any potential adverse affects the proposed transaction may have on the wholesale long distance market in Montana. WC Exh. 8 at 3-4; H.Tr. at 190-196. The record indicates that in the near future GTE will be able to unilaterally discontinue its purchase of WorldCom's services and seek service from other carriers if it becomes dissatisfied by WorldCom's service, though WorldCom will remain obligated for several more years thereafter to supply service to GTE if and to the extent that GTE wishes. H.Tr. at 195-196. The record also indicates that GTE is in the process of acquiring and constructing its own network, thereby reducing its need for WorldCom's and other carriers' wholesale services. Tr. at 196-199.

Decision

21. Based on the record before it, the Commission concludes that the proposed transfer of control of MCI's Montana operating subsidiaries to WorldCom is in the public interest and should be approved.

Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities operating in Montana. Section 69-3-102, MCA. MCI and WorldCom are public utilities offering “regulated telecommunications services” in the State of Montana as defined in Section 69-3-803(6)(a), MCA. Section 69-3-101, MCA.
2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings before it. Section 69-3-103, MCA.
3. The Commission has jurisdiction over all utility activities which affect a utility’s duty to render reasonably adequate services and facilities at reasonable and just rates, and has the authority to “do all things necessary and convenient in the exercise of its powers,” including the authority to approve the sale or acquisition of public utilities that provide intrastate regulated telecommunications services. Sections 69-3-103 and -201, MCA.
4. The Commission’s review in the proceeding is “limited to the effects of the proposed merger on Montana intrastate regulated telecommunication products.” Notice of Commission Action, March 13, 1998.
5. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

Order

THEREFORE, based upon the foregoing, it is ORDERED that, upon ratification of the merger of MCI and WorldCom by shareholders, and upon satisfaction of the conditions imposed by the European Union, the United States Department of Justice and the Federal Communications Commission, the proposed transfer of control of MCI's Montana operating subsidiaries to WorldCom is APPROVED.

Approval of the proposed merger does not constitute determination or approval of rates or any rate making issues.

DONE AND DATED this 3rd date of August, 1998, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY McCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary
(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. *See* ARM 38.2.4806.